



U.S. Department of Justice

*United States Attorney
Southern District of New York*

United States Courthouse

*300 Quarropas Street
White Plains, New York 10601*

September 15, 2006

By hand

Hon. Stephen C. Robinson
United States District Judge
Southern District of New York
United States Courthouse
300 Quarropas Street
White Plains, New York 10601

Re: United States v. Khalid Barnes, S9 04 Cr. 186 (SCR)

Dear Judge Robinson:

As the Court is aware, the Government currently has a pending motion to amend the Notice of Intent to Seek the Death Penalty against Khalid Barnes. Defense counsel has opposed the motion on two grounds: (i) there is no "good cause" for the amendment, and (ii) the repeal of the Title 21 capital procedures precludes the Government from seeking the death penalty on the Title 21 capital counts (Counts 25 and 26 in the S9 Indictment). (Deft.'s Sept. 7, 2006 Ltr. at 2,3).

Although we believe the second argument to be frivolous, we write to advise the Court that we have decided not to proceed with any of the Title 21 Continuing Criminal Enterprise counts (Counts 23, 24, 25 and 26 in S9), including the capital CCE counts. We will be pursuing all other counts, including the capital counts charged under 18 U.S.C. § 924(j)(1) (Counts 27 and 28 in S9). Accordingly, we enclose a revised proposed Notice of Intent reflecting the deletion of the Title 21 capital charges.

We apologize for changing the proposed Notice in the midst of the parties' briefing, but only today did the Government's decision to delete the Continuing Criminal Enterprise counts become final.

Respectfully submitted,

MICHAEL J. GARCIA
United States Attorney

By:

_____/s/_____
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Enclosure

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